

PLEA AGREEMENT ROUTING SLIP

revised November 2001

From: Dana Boente

Date: _____

Case: United States

USAO No. 2001R05929

Date Plea Scheduled: _____

(Reminder: e-mail your final statement of facts to Sam Dibbley once the plea has been taken before the Judge)

1. Please Check Whether this is a Pre- or Post- Indictment Agreement

_____ ☐ Pre-Indictment Plea
☒ Post-Indictment Plea

2. Optional Sentences or Paragraphs Were Deleted:

<input checked="" type="checkbox"/> Detention Language	<input checked="" type="checkbox"/> Substantial Assistance Paragraph
<input checked="" type="checkbox"/> Forfeiture Paragraphs	<input checked="" type="checkbox"/> Immigration Deportation
<input type="checkbox"/> Advice of Rights Paragraph	<input type="checkbox"/> Tax Language Paragraphs
<input checked="" type="checkbox"/> Cooperation Paragraphs	<input type="checkbox"/> No Other Conditions Paragraph

3. Modifications Were Made to the Following Paragraphs:

Please note page and paragraph number of final document.

<u>Page No.</u>	<u>Paragraph No.</u>		
_____	_____	_____	_____
_____	_____	_____	_____

4. Is Restitution Applicable:

☐ Yes ☐ No

If yes, are victims fully and correctly identified and the amount due each stated:

☐ Yes ☐ No

5. The Following Paragraphs Were Added:

Please note page and paragraph number of final document

<u>Page No.</u>	<u>Paragraph No.</u>		
Para 5	_____	_____	_____

6. APPROVAL

To: John J. Klein

Approved: _____ **Date:** _____

To: Justin Williams (Alexandria cases only)

Approved: _____ **Date:** _____

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA)	
)	
v.)	CRIMINAL NO. Cr. 02-338
)	
MICHAEL A. CAIN)	
)	
Defendant.)	

PLEA AGREEMENT

Paul J. McNulty, United States Attorney for the Eastern District of Virginia, and Dana J. Boente, Assistant United States Attorney, and the defendant, Michael A. Cain, and the defendant's counsel, Suzanne Little, pursuant to Rule 11(e) of the Federal Rules of Criminal Procedure, have entered into an agreement, the terms and conditions of which are as follows:

1. The defendant, Michael A. Cain, agrees to plead guilty to Count Seven of the pending indictment. Count Seven charges the defendant with income tax evasion, in violation of Title 26, United States Code, Section 7201. The maximum penalty for this offense is: a maximum term of five years of imprisonment, a fine of \$250,000, full restitution, a special assessment, and three years of supervised release. The defendant is aware that this supervised release term is in addition to any prison term the defendant may receive, and that a violation of a term of supervised release could result in the defendant being returned to prison for the full term of supervised release.

2. Before sentencing in this case, the defendant agrees to pay a mandatory special assessment of one hundred dollars (\$100.00) per count of conviction.

3. The defendant is aware that the defendant's sentence will be imposed in accordance with the Sentencing Guidelines and Policy Statements. The defendant is aware that the Court has jurisdiction and authority to impose any sentence within the statutory maximum set for the offense to which the defendant pleads guilty. The defendant is aware that the Court has not yet determined a sentence. The defendant is also aware that any estimate of the probable sentencing range under the sentencing guidelines that the defendant may have received from the defendant's counsel, the United States, or the probation office, is a prediction, not a promise, and is not binding on the United States, the probation office, or the Court. The United States makes no promise or representation concerning what sentence the defendant will receive, and the defendant cannot withdraw a guilty plea based upon the actual sentence. The defendant is aware that Title 18, United States Code, Section 3742 affords a defendant the right to appeal the sentence imposed. Acknowledging all this, the defendant knowingly waives the right to appeal any sentence within the maximum provided in the statute of conviction (or the manner in which that sentence was determined) on the grounds set forth in Title 18, United States

Code, Section 3742 or on any ground whatever, in exchange for the concessions made by the United States in this plea agreement. This agreement does not affect the rights or obligations of the United States as set forth in Title 18, United States Code, Section 3742(b).

4. The United States and the defendant agree that the tax loss for the evasion of payment charged in count seven of the indictment is \$176,981. Pursuant to U.S.S.G. Section 2T4.1, this results in an offense level of 15. If the defendant truthfully admits the entirety of his criminal conduct and receives a two point reduction for acceptance of responsibility (U.S.S.G. Section 3E1.1), the offense level of 13 provides for a sentencing range of 12 to 18 months of incarceration.

5. The United States will not further criminally prosecute defendant in the Eastern District of Virginia for the specific conduct described in the indictment, criminal information or statement of facts. Therefore, defendant does not have immunity for crimes related to, but not specifically set out in the indictment, criminal information or statement of facts. After the Court's acceptance of this plea, the United States will move to dismiss the remaining counts of the indictment. Except where specifically noted, this plea agreement binds only the United States Attorney's Office for the Eastern District of Virginia and

the defendant; it does not bind any other prosecutor in any other jurisdiction.

6. The defendant represents to the Court that defendant is satisfied that defendant's attorney has rendered effective assistance. Defendant understands that by entering into this agreement, defendant surrenders certain rights as provided in this agreement. Defendant understands that the rights of criminal defendants include the following:

a. If the defendant persisted in a plea of not guilty to the charges, defendant would have the right to a speedy jury trial with the assistance of counsel. The trial may be conducted by a judge sitting without a jury if the defendant, the United States, and the judge all agree.

b. If a jury trial is conducted, the jury would be composed of twelve laypersons selected at random. The defendant and defendant's attorney would assist in selecting the jurors by removing prospective jurors for cause where actual bias or other disqualification is shown, or by removing prospective jurors without cause by exercising peremptory challenges. The jury would have to agree unanimously before it could return a verdict of either guilty or not guilty. The jury would be instructed that the defendant is presumed innocent, that it could not convict the defendant unless, after hearing all the evidence, it

was persuaded of the defendant's guilt beyond a reasonable doubt, and that it was to consider each charge separately.

c. If a trial is held by the judge without a jury, the judge would find the facts and, after hearing all the evidence and considering each count separately, determine whether or not the evidence established the defendant's guilt beyond a reasonable doubt.

d. At a trial, the United States would be required to present its witnesses and other evidence against the defendant. The defendant would be able to confront those witnesses and defendant's attorney would be able to cross-examine them. In turn, the defendant could present witnesses and other evidence in defendant's own behalf. If the witnesses for the defendant would not appear voluntarily, defendant could require their attendance through the subpoena power of the Court.

e. At a trial, the defendant could rely on a privilege against self-incrimination to decline to testify, and no inference of guilt could be drawn from the refusal to testify. If the defendant desired to do so, the defendant could testify in the defendant's own behalf.

7. The accompanying Statement of Facts signed by the defendant is hereby incorporated into this plea agreement. Defendant adopts the Statement of Facts and agrees that the facts therein are accurate in every respect and that had the matter

proceeded to trial, the United States would have proved those facts beyond a reasonable doubt.

8. The defendant agrees to join in a motion with the United States under Rule 6(e)(3)(C) of the Federal Rules of Criminal Procedure, to disclose grand jury material to the Internal Revenue Service for use in computing and collecting the defendant's taxes, interest and penalties, and to the civil and forfeiture sections of the United States Attorney's Office for use in identifying assets and collecting fines and restitution.

9. The defendant also agrees to file true and correct tax returns for the years 1996 through 2001 within sixty days and to pay all taxes, interest and penalties for the years 1989, 1990, 1992, 1994 through 2001 within a reasonable time in accordance with a plan to be devised by the Probation Office.

10. The defendant also agrees to make all books, records and documents available to the Internal Revenue Service for use in computing defendant's taxes, interest and penalties for the years 1989, 1990, 1992, and 1994 through 2001.

11. If the defendant fails in any way to fulfill completely all of the obligations under this plea agreement, the United States may seek release from any or all its obligations under this plea agreement.

12. If the defendant fails to fulfill the obligations under this plea agreement, the defendant shall assert no claim under

the United States Constitution, any statute, Rule 410 of the Federal Rules of Evidence, Rule 11(e)(6) of the Federal Rules of Criminal Procedure, or any other federal rule, that defendant's statements pursuant to this agreement or any leads derived therefrom, should be suppressed or are inadmissible.

13. Any alleged breach of this agreement by either party shall be determined by the Court in an appropriate proceeding at which the defendant's disclosures and documentary evidence shall be admissible and at which the moving party shall be required to establish a breach of the plea agreement by a preponderance of the evidence. The proceeding established by this paragraph does not apply, however, to the United States' decision whether to file a motion based on "substantial assistance" as that phrase is used in Rule 35(b) of the Federal Rules of Criminal Procedure and Section 5K1.1 of the Sentencing Guidelines and Policy Statements. The defendant agrees that the decision whether to file such a motion rests in the United States' sole discretion.

14. The defendant hereby waives all rights, whether asserted directly or by a representative, to request or receive from any department or agency of the United States any records pertaining to the investigation or prosecution of this case, including without limitation any records that may be sought under the Freedom of Information Act, 5 U.S.C. § 552, or the Privacy Act, 5 U.S.C. § 552a.

15. This written agreement constitutes the complete plea agreement between the United States, the defendant, and the defendant's counsel. The United States has made no promises or representations except as set forth in writing in this plea agreement. The defendant acknowledges that no threats have been made against the defendant and that the defendant is pleading guilty freely and voluntarily because the defendant is guilty. Any modification of this plea agreement shall be valid only as set forth in writing in a supplemental or revised plea agreement signed by all parties.

16. Defendant's Signature: I hereby agree that I have consulted with my attorney and fully understand all rights with respect to the pending criminal indictment or criminal information. Further, I fully understand all rights with respect to the provisions of the Sentencing Guidelines and Policy Statements which may apply in my case. I have read this plea agreement and carefully reviewed every part of it with my attorney. I understand this agreement and I voluntarily agree to it.

Date: _____

MICHAEL A. CAIN
Defendant

17. Defense Counsel Signature: I am counsel for the defendant in this case. I have fully explained to the defendant the defendant's rights with respect to the pending indictment or

criminal information. Further, I have reviewed the provisions of the Sentencing Guidelines and Policy Statements and I have fully explained to the defendant the provisions of those Guidelines which may apply in this case. I have carefully reviewed every part of this plea agreement with the defendant. To my knowledge, the defendant's decision to enter into this agreement is an informed and voluntary one.

Date: _____

Suzanne Little
Counsel for Defendant

Respectfully submitted,

PAUL J. McNULTY
United States Attorney

By:

Dana J. Boente
Assistant United States Attorney

APPROVED:

Justin W. Williams
Chief, Criminal Section

Date: _____